IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1591 of 1984

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHIDABHAI BHURABHAI SHAIKH [DECD.THRO HEIRS AND L.R.]

Versus

BAI BASIREN KALEKHAN

Appearance:

MR KV SHELAT for Petitioners Nos. 1-1/9

MR SK BUKHARI for Respondents Nos. 1-5

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 11/05/2005

ORAL JUDGEMENT

Feeling aggrieved by the judgment and order dated 30th September, 1983 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.389/1978, the appellant, plaintiff in H.R.P.Suit No.6547/1973, has

preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Rent Act").

The suit premises is a piece of land admeasuring 100 sq.yards bearing Municipal Census No.82, part of Revenue Survey Nos.188/1 and 188/2 known as Mahadev Ramchandra Jagushte's Chawl situated at Asarwa, Ahmedabad. By a sale deed dated 19th June, 1969 the plaintiff purchased the lands bearing Revenue Survey Nos.188/1 and 188/2 admeasuring 1-Acre 19-Gunthas situated at Asarwa, Ahmedabad from the heirs of one Jeminikumar Jagushte. The suit land is part of the said Revenue Survey Nos.188/1 and 188/2. The defendant No.1 was the tenant in the suit land for a monthly rent of Rs.8=00. Due notice of attornment was given to the defendant No.1. The defendant No.1 continued to pay rent to the plaintiff until 31st March, 1972. She fell in arrears since 1st April, 1972. The plaintiff, therefore, instituted H.R.P.Suit No.6547/1973 for recovery of possession of the suit land on the grounds that the defendant No.1 was the tenant in default and that she was not ready and willing to pay the rent. The suit land was leased to the defendant No.1 for commercial purpose as fire wood depot, the defendant No.1 had changed the user, had constructed huts bearing Municipal Census Nos.92/2, 92/3, 92/4, 92/5/1 and 92/5/2 on the suit land and had given the said huts on rent for residence; that the defendant No.1 had unlawfully sublet the said huts to the defendants Nos.2 to 7.

The suit was contested by the defendant No.1 by written statement Exh.15 and by defendants Nos.2 to 7 by written statement Exh.30. The defendants denied the allegations made by the plaintiff. It was stated that the suit land was leased to the defendant No.1 with the existing construction of huts and that the defendants Nos.2 to 7 were inducted as tenants in the said huts with the permission of the then owner. Pending the suit on 6th January, 1978 the defendant No.1 moved application Exh.54 for amendment of the written statement. The said amendment was allowed. Under the said amendment the defendant No.1 challenged the title of the plaintiff over the suit land. Thereupon, the plaintiff sought eviction on the ground of disclaimer also.

The learned trial Judge, by judgment and order dated 16th September, 1978, dismissed the suit. It was

held that the plaintiff had no right, title or interest in the suit land and that the standard rent of the suit land was Rs.8=00 per month exclusive of municipal taxes to be borne by the defendant No.1. As to the subletting, the learned trial Judge held that what was leased to the defendant No.1 was an open land. The superstructure constructed over the open land belonged to the defendant No.1. The defendants Nos.2 to 7 were the tenants in the said superstructures. The defendants Nos.2 to 7, therefore, cannot be said to be the sub-tenants. Feeling aggrieved, the plaintiff preferred the above referred Civil Appeal No.389/1978 before the Appellate Bench, Small Causes Court, Ahmedabad which came to be dismissed on 30th September, 1983. Therefore, the present Revision Application.

Learned advocate Mr.Shelat has submitted that the lower appellate Court has erred in holding that the plaintiff had no right, title or interest over the suit land. He has relied upon various documents to trace the history of transfer of property in the suit land since the year 1888. He has submitted that a large piece of land admeasuring 3-Acres 8-Gunthas was inherited by two brothers Kalidas Keshavram and Ambaram Keshavram. On partition each brother received land admeasuring 1-Acre 24-Gunthas. One of the brothers, Kalidas Keshavram Bhatt had mortgaged the land which came in his share to one Shri Ramchandra Jagushte, the predecessor of the plaintiff. The successor of the said Shri Ramchandra Jagushte one Shri Govind Mahadev Jagushte instituted Civil Suit No.1510/1925 for recovery of money against the successors of the said Shri Kalidas Bhatt one Shri Chhotalal Kalidas Bhatt and Bai Ganga, widow of one Shri Trikamlal Kalidas Bhatt. Pursuant to the decree passed in the said suit, with the permission of the Court, the said Shri Govind Mahadev Jagushte purchased the said land admeasuring 1-Acre 24-Gunthas in Court auction. Of the said 1-Acre 24-Gunthas of land 5-Gunthas of land was acquired by the Railways leaving 1-Acre 19-Gunthas. The said land admeasuring 1-Acre 19-Gunthas was transferred by the said Shri Govind Mahadev Jagushte to his nephew Shri Ashwinikumar Harischandra Hegishte under a gift deed dated 22nd July, 1953 (Exh.77). The said Shri Ashwinikumar bequeathed his properties including the said lands to the vendors of the plaintiff one Shri Jeminikumar and his sons Shri Dipak Jeminikumar and Shri Uday Jeminikumar under the Will dated 23rd March, 1966 (Exh.91). The very lands Survey Nos.188/1 and 188/2 including the suit land were sold by the heirs of the said Shri Jeminikumar Jagushte to the plaintiff by a

registered sale deed dated 19th June, 1969. He has submitted that the plaintiff had thus successfully established his title over the suit land. The aforesaid Court sale dated 25th September, 1927 and all subsequent documents i.e. the gift deed (Exh.77), the Will (Exh.91) and the agreement to sell to the plaintiff specifically refer to the suit land and the huts constructed over it. He has further submitted that no one else has claimed title over the suit land. With a view to removing any doubt the vendors of the plaintiff have also, pending the appeal before the lower appellate Court, executed a rectification deed on 25th August, 1986 declaring that the suit land was the part of the lands sold to the plaintiff and the consideration received by the vendors included the price of the suit land also. Mr.Shelat has also submitted that even the defendant No.1 acknowledged the plaintiff as her landlord and paid the rent to the plaintiff up to 31st March, 1972. The plaintiff is thus entitled to possession of the suit land on the ground of disclaimer also. Mr.Shelat has relied upon the rent receipts (Exhs.121 to 132), the maps (Exhs.135, 136, 139, 140 and 141), the surveyor's report and the evidence of the surveyours.

In support of his arguments, Mr.Shelat has relied upon the judgments of the Hon'ble Supreme Court in the matters of Tej Bhan Madan v/s. II Additional District Judge and others [(1988)3 SCC 137]; of S.Thangappan v/s. P.Padmavathy [AIR 1999 SC 3584]; of S.Thangappan v/s. P.Padmavathy ([1999)7 SCC 474]; and of Rita Lal v/s. Raj Kumar Singh [2002 SAR (Civil) 857]. He has also relied upon Sections 105 to 108 of the Transfer of Property Act, 1882 and Section 116 of the Indian Evidence Act, 1872.

Learned advocate Mr.Bukhari has contested the Revision Application. He has supported the judgment of the lower appellate Court. He has submitted that it is proved on evidence on record that the suit land is part of the land Survey No.188/3. Admittedly, the plaintiff has not purchased the land Survey No.188/3. He has also submitted that the rent up to 31st May, 2005 has been deposited in the trial Court.

It appears that the lands Survey Nos.188/1 and 188/2 were purchased by the plaintiff under the sale deed dated 19th June, 1969. It was believed all along that the suit land was part of the land bearing Survey No.188/2 purchased by the plaintiff. However, in eviction proceeding against one Kantaben it came on record that the suit land was part of the Revenue Survey No.188/3. Admittedly, the plaintiff had not purchased

the land Survey No.188/3. Thus, prima facie, it appears that the plaintiff's title over the suit land was doubtful. The challenge to the said title was made on the basis of the finding recorded in a Court proceeding. I am, therefore, of the view that the challenge to the title of the plaintiff over the suit land by the defendant No.1 was bonafide. No decree for eviction, therefore, could have been passed against the defendant No.1 on the ground of disclaimer. As to the subletting, it has been found that the defendants Nos.2 to 7 were leased the superstructures constructed by the defendant No.1 and that they were in occupation of the superstructures for past 30 years. No decree for eviction, therefore, could have been passed against the defendant No.1 on the ground of unlawful subletting also.

However, I am of the view that the lower appellate Court has erred in holding that the plaintiff was not the owner of the suit land. The Rent Court has no jurisdiction to entertain and decide the issue as to the title over the property. It does appear that the plaintiff's title over the suit land is nebulous. However, Rent Court is not an appropriate forum for declaration of title or the lack of it.

In view of the above discussion the Revision Application is partly allowed. The observations made by the lower appellate Court and the finding recorded with respect to the plaintiff's title over the suit land are quashed and set-aside. Rule is made absolute to the above extent. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

/sakkaf